

117TH CONGRESS  
1ST SESSION

# S. 841

To decrease the cost of hiring, and increase the take-home pay of, Puerto Rican workers.

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IN THE SENATE OF THE UNITED STATES

MARCH 18, 2021

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To decrease the cost of hiring, and increase the take-home pay of, Puerto Rican workers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Economic Mobility for  
5 Productive Livelihoods and Expanding Opportunity Act of  
6 2021” or the “EMPLEO Act”.

7 **SEC. 2. FEDERAL MINIMUM WAGE REQUIREMENT FOR ELI-**  
8 **GIBLE PUERTO RICO EMPLOYEES.**

9 Section 6(a) of the Fair Labor Standards Act of  
10 1938 (29 U.S.C. 206(a)) is amended—

1 (1) by redesignating paragraphs (2) through  
 2 (4) as paragraphs (3) through (5), respectively; and

3 (2) by inserting after paragraph (1) the fol-  
 4 lowing:

5 “(2) if such employee is an eligible Puerto Rico  
 6 employee, as defined in section 6431(c) of the Inter-  
 7 nal Revenue Code of 1986, who receives a qualified  
 8 wage subsidy payment under section 6431 of such  
 9 Code from a participating employer, \$5.00 an hour  
 10 (as determined without regard to the qualified wage  
 11 subsidy payment);”.

12 **SEC. 3. WAGE SUBSIDY FOR PUERTO RICO WORKERS.**

13 (a) IN GENERAL.—Subchapter B of chapter 65 of the  
 14 Internal Revenue Code of 1986 is amended by adding at  
 15 the end the following new section:

16 **“SEC. 6431. WAGE SUBSIDY FOR PUERTO RICO WORKERS.**

17 “(a) IN GENERAL.—In the case of a participating  
 18 employer which makes qualified wage subsidy payments  
 19 to eligible Puerto Rico employees, such participating em-  
 20 ployer shall be treated for purposes of this title as having  
 21 paid to the Secretary, on the date any such qualified wage  
 22 subsidy payment is paid, payroll taxes in an amount equal  
 23 to such wage subsidy payment.

24 “(b) PARTICIPATING EMPLOYER.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘participating employer’ means an em-  
3           ployer which—

4                   “(A) elects the application of this section,

5                   “(B) makes qualified wage subsidy pay-  
6           ments to all eligible Puerto Rico employees of  
7           such employer,

8                   “(C) provides to each eligible Puerto Rico  
9           employee (in such form and manner as the Sec-  
10          retary shall by regulations prescribe) informa-  
11          tion about the amount of qualified wage subsidy  
12          payments paid to such employee at the time  
13          such payments are made, and

14                   “(D) in the case of an employer which  
15          elects to receive an advance payment under sub-  
16          section (g), provides to the Secretary the infor-  
17          mation described in paragraph (2) not later  
18          than 30 days before the beginning of the appli-  
19          cable period.

20           “(2) INFORMATION REQUIRED.—The informa-  
21          tion required under this paragraph is the following:

22                   “(A) An estimate of the number of workers  
23          who will be employed by the participating em-  
24          ployer for the applicable period.

1           “(B) An estimate of the payroll taxes (de-  
2           termined without regard to any increase in tax  
3           under section 3111 by reason of subsection  
4           (g)(2)) that will be paid by the participating  
5           employer with respect to all employees for such  
6           applicable period.

7           “(C) An estimate of the number of eligible  
8           Puerto Rico employees who will be employed by  
9           the participating employer for such applicable  
10          period and the hourly rate of pay for each such  
11          employee (determined without regard to any  
12          qualified wage subsidy payment).

13          “(D) An estimate of the aggregate amount  
14          of qualified wage subsidy payments that will be  
15          paid by such employer to eligible Puerto Rico  
16          employees for such applicable period.

17          “(3) FAILURE TO MAKE SUBSIDY PAYMENTS.—  
18          For purposes of this title (including penalties), the  
19          failure by any employer which makes an election  
20          under paragraph (1)(A) to make any qualified wage  
21          subsidy payment at the time provided therefor shall  
22          be treated as the failure at such time to deduct and  
23          withhold under section 3102 an amount equal to the  
24          amount of such qualified wage subsidy payment.

1       “(c) ELIGIBLE PUERTO RICO EMPLOYEE.—For pur-  
2 poses of this section, the term ‘eligible Puerto Rico em-  
3 ployee’ means, with respect to any calendar year, any indi-  
4 vidual who—

5               “(1) is a citizen of the United States,

6               “(2) has a social security number issued to the  
7 individual by the Social Security Administration,  
8 and

9               “(3) certifies, in such form and manner as pro-  
10 vided by the Secretary, to the employer that such in-  
11 dividual is a resident of Puerto Rico and intends to  
12 remain a resident of Puerto Rico for not less than  
13 the next 6 months.

14       “(d) QUALIFIED WAGE SUBSIDY PAYMENT.—For  
15 purposes of this section—

16               “(1) IN GENERAL.—The term ‘qualified wage  
17 subsidy payment’ means, with respect to any eligible  
18 Puerto Rico employee for any period, a payment  
19 equal to 50 percent of the excess (if any) of—

20                       “(A) the median hourly wage for Puerto  
21 Rico, over

22                       “(B) the hourly wage paid to the eligible  
23 Puerto Rico employee.

1           “(2) MEDIAN HOURLY WAGE FOR PUERTO  
2 RICO.—For purposes of paragraph (1)(A), the me-  
3 dian hourly wage for Puerto Rico is—

4                   “(A) \$10 for calendar years 2022 and  
5 2023, and

6                   “(B) for any calendar year beginning after  
7 2023, the amount determined by the Bureau of  
8 Labor Statistics based on the most recent data  
9 available as of 30 days before the start of such  
10 calendar year.

11           “(3) DETERMINATION OF HOURLY WAGE.—For  
12 purposes of paragraph (1)(B)—

13                   “(A) IN GENERAL.—The hourly wage of  
14 any employee shall be determined without re-  
15 gard to any qualified wage subsidy payment  
16 under this section.

17                   “(B) PERIOD.—Each hour at which an eli-  
18 gible Puerto Rico employee performs services  
19 for a different rate of pay shall be treated as  
20 a separate period.

21                   “(C) SALARIED EMPLOYEES.—In the case  
22 of a salaried employee, the hourly wage for such  
23 employee for any period shall be determined by  
24 dividing the annual rate of pay for such period  
25 by 2,080.

1       “(e) PAYROLL TAXES.—For purposes of this section,  
2 the term ‘payroll taxes’ means—

3           “(1) amounts required to be deducted for the  
4 payroll period under section 3102 (relating to FICA  
5 employee taxes), and

6           “(2) amounts of the taxes imposed for the pay-  
7 roll period under section 3111 (relating to FICA em-  
8 ployer taxes).

9       “(f) OTHER DEFINITIONS AND SPECIAL RULES.—  
10 For purposes of this section—

11           “(1) APPLICABLE PERIOD.—For purposes of  
12 this section, the term ‘applicable period’ means—

13           “(A) except as provided in subparagraph  
14 (B), a calendar quarter, and

15           “(B) in the case of any employer which  
16 files returns for payroll taxes less frequently  
17 than quarterly, such period as determined by  
18 the Secretary under regulations.

19           “(2) WAGE SUBSIDY PAYMENTS IN EXCESS OF  
20 PAYROLL TAX LIABILITY.—To the extent that the  
21 amount treated as paid under subsection (a) exceeds  
22 the amount of such person’s liability for payroll  
23 taxes, the Secretary shall credit and refund such ex-  
24 cess in the same manner as if it were an overpay-  
25 ment of such taxes.

1       “(g) ADVANCED PAYMENTS FOR CERTAIN PARTICI-  
2     PATING EMPLOYERS.—

3               “(1) IN GENERAL.—In the case of a partici-  
4     pating employer which elects the application of this  
5     subsection, the Secretary shall pay to such partici-  
6     pating employer, not later than the first day of the  
7     applicable period, an amount equal to the excess  
8     of—

9               “(A) the aggregate amount of qualified  
10     wage subsidy payments for such applicable pe-  
11     riod (as determined based on estimates sub-  
12     mitted under subsection (b)(2)), exceeds

13              “(B) the aggregate amount of payroll taxes  
14     (determined without regard to any increase in  
15     tax under section 3111 by reason of paragraph  
16     (2) and based on estimates submitted under  
17     subsection (b)(2)) for such applicable period.

18              “(2) TREATMENT OF PAYMENTS.—For pur-  
19     poses of this title, the amount of taxes imposed  
20     under section 3111 on any participating employer  
21     for any calendar quarter shall be increased by an  
22     amount equal to any payment made under para-  
23     graph (1) with respect to such calendar quarter.”.

24              (b) SOCIAL SECURITY TRUST FUNDS HELD HARM-  
25     LESS.—In determining the amount of any amount trans-



1 ferred or appropriated to any fund under the Social Secu-  
 2 rity Act, section 6431 of the Internal Revenue Code of  
 3 1986 shall not be taken into account.

4 (c) CONFORMING AMENDMENT.—The table of sec-  
 5 tions for subchapter B of chapter 65 of the Internal Rev-  
 6 enue Code of 1986 is amended by adding at the end the  
 7 following new item:

“Sec. 6431. Wage subsidy for Puerto Rico workers.”.

8 (d) OTHER PROVISIONS.—

9 (1) REPORTING OF WAGE SUBSIDY INFORMA-  
 10 TION.—Section 6051(a) of the Internal Revenue  
 11 Code of 1986 is amended by striking “and” at the  
 12 end of paragraph (16), by striking the period at the  
 13 end of paragraph (17) and inserting “, and”, and by  
 14 inserting after paragraph (17) the following new  
 15 paragraph:

16 “(18) in the case of an eligible Puerto Rico em-  
 17 ployee (as defined in section 6431), the amount of  
 18 any qualified wage subsidy payment paid to such  
 19 employee.”.

20 (2) PENALTY FOR FAILURE TO PROVIDE INFOR-  
 21 MATION TO EMPLOYEES.—Section 6652 of such  
 22 Code is amended by adding at the end the following  
 23 new subsection:

24 “(q) FAILURE TO REPORT WAGE SUBSIDY INFORMA-  
 25 TION TO EMPLOYEES.—In the case of a failure to provide

1 the information required under section 6431(b)(1)(C) at  
2 the time required for providing such information, there  
3 shall be paid (upon notice and demand by the Secretary  
4 and in the same manner as tax) by the person failing to  
5 provide such information, an amount equal to \$50 for each  
6 such failure. In the case of any failure due to negligence  
7 or intentional disregard, the preceding sentence shall be  
8 applied by substituting ‘\$100’ for ‘\$50’.”.

9 (e) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to wages paid after December 31,  
11 2021.

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